

R. M. BARTON

IBLA 73-130a

Decided January 15, 1973

Appeal from a decision of the New Mexico State Office, Bureau of Land Management, dismissing a protest against oil and gas lease offer NM 16624.

Affirmed.

Rules of Practice: Appeals: Generally

Where the issues on appeal are identical or substantially similar to matters previously considered, and no new evidence or persuasive arguments are advanced for reconsideration or reversal of the prior position, disposition will be made in accordance with prior precedent.

Oil and Gas Leases: Applications: Sole Party in Interest

An oil and gas lease applicant is not precluded from stating that he is the sole party in interest where he filed through a leasing service and there is no enforceable agreement entered into whereby the applicant is obligated to transfer any interest in the lease if or when a lease issues.

Oil and Gas Leases: Rentals

A protest of a successful drawee's offer in a simultaneous drawing, for the reason that the advance rental payment required under 43 CFR 3112.2-1(a) was submitted in the form of a corporate or other private commercial money order, is properly dismissed where it is determined that such a money order is an acceptable remittance within the meaning of the term 'money order' as used in the regulation.

APPEARANCES: R. M. Barton, pro se; Gayle E. Manges, Field Solicitor, Department of the Interior, Santa Fe, New Mexico; Lawrence R. Hoese, Office of the Solicitor, Department of the Interior, Washington, D.C.

OPINION BY MR. HENRIQUES

A decision of the New Mexico State Office, BLM, dismissed the appellant's protest against the issuance of an oil and gas lease to the successful applicant in the simultaneous drawing procedures conducted in July 1972. Lease NM 16624 was executed in behalf of the United States on August 10, 1972, the same day that appellant's protest of the July drawing was filed at 3:17 P.M. The Bureau of Land Management considered the filing of that protest as timely and as suspending the effect of issuance of said lease pending final action on the protest.

Three major contentions are pressed on this appeal. The first is premised on the argument that the type of money order used by the offerors to pay the advance rental is not permissible within the terms of 43 CFR 3123.9(a), now 43 CFR 3112.2-1(a)(2) (1972), which provides, inter alia, that "the advance rental must be paid by cash, money order, certified check, bank draft, or bank cashier's check."

The appellant's second contention deals with the utilization by the offeror of a filing service. In effect he argues that: (a) the filing service has an expectancy interest in the lease; (b) by the clear wording of the statute an offeror must indicate such interests on his drawing entry card; and (c) the offeror's failure to so note must result in the removal of his priority. Thus in effect, the contention is that the offeror was not the sole party in interest.

We observe that these contentions are substantially similar to contentions by this appellant considered in R. M. Barton, 4 IBLA 229 (1972), 5 IBLA 1 (1972), and 7 IBLA 68 (1972). In each case the dismissal of the appellant's protest was affirmed. We adhere to that position. In suits initiated by the appellant to test the validity of those decisions, R. M. Barton v. Morton, et al., Civil 9322, 9415 and 9692 U.S.D.C.D.N.M., the Court held that the Department of the Interior determinations were based upon substantial evidence and were in accordance with the law, that plaintiff had not exhausted his administrative remedy as to matters contained in Count I of Civil 9692, and that as there had been no final agency action on plaintiff's protest to issuance of lease NM 16624, the same should be dismissed.

The appellant further contends that there were multiple filings by some individuals for NM 16624. He is correct in that nine persons did file more than one offer each for this parcel. However, each card in the drawing for the lease had the same relative chance as every other card to be chosen first. The appellant has failed to submit any evidence to show that the successful offeror for this

parcel submitted multiple filings, and the record does not suggest that he did. If it is found that an offeror has submitted multiple filings for a single parcel, all offers filed by him for such parcel will be rejected. 43 CFR 3112.5-2. The determination of the validity of a successful offer is not made until after the drawing to determine priority has been held. Admittedly, if the local BLM office had exercised proper review of the filings, in accordance with its instructions, the presence of the multiple filings would have been discovered prior to the drawing, and none would have been included therein. In the circumstances, however, we find no reason to suggest that a new drawing be held for the said Parcel No. 69.

Likewise, there is nothing in the record before us which indicates that it was incorrect to issue oil and gas lease NM 16624 to Edwin D. Litten, the successful drawee, although the action may be considered as precipitate in the circumstances.

A motion to intervene and a motion for summary dismissal of the appeal has been filed on behalf of Hanagan Petroleum Corporation, an alleged bona fide purchaser of the lease. In light of our holding that the lease was not incorrectly issued, it is unnecessary to discuss these motions.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed, and the case remanded to the Bureau of Land Management for further appropriate action.

Douglas E. Henriques, Member

We concur.

Martin Ritvo, Member

Frederick Fishman, Member

